



ENVIRONMENTAL ASSESSMENT BOARD

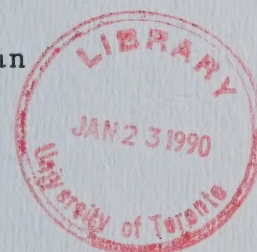
VOLUME: 174

DATE: Wednesday, January 17th, 1990

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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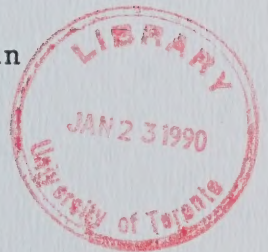
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Wednesday, January 17th,
1990, commencing at 5:00 p.m.

VOLUME 174

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



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A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
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MS. K. MURPHY)	RESOURCES
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
MS. B. HARVIE)	
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MR. R. COSMAN)	ASSOCIATION and ONTARIO
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MR. P.D. McCUTCHEON	GEORGE NIXON
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I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
998	Document entitled: OFIA/OLMA Panels re: outline of evidence for Industry Panels 1 through 10.	30877

1 ---Upon commencing at 5:20 p.m.

2 THE CHAIRMAN: Thank you, everyone.

3 Please be seated.

4 I suppose, since this is the first time
5 in my career I have appeared informally attired because
6 I didn't get a chance to go back to my cabin this
7 afternoon and change, I should put it on the record
8 that nobody else should be taking this to mean that
9 scoping sessions are informal and are not part of the
10 hearing.

11 Well, we think we can cover today's
12 scoping session with respect to the Industry's first
13 panel relatively quickly. As you are aware, the first
14 panel's witness statement is comprised essentially of
15 three papers and we have some questions with respect to
16 each of them.

17 We also, at some stage, want to deal with
18 the suggestion that has been put forward that Panel 4's
19 evidence can be addressed through putting in direct
20 evidence only, I believe, with no cross-examination, as
21 Panel 4's evidence is more or less an overview panel.
22 But, Mr. Cosman, you may want to deal with that
23 formally.

24 MR. CASSIDY: I'm prepared to speak to
25 that, Mr. Chairman.

1 THE CHAIRMAN: Are you going to speak to
2 that, Mr. Cassidy? Okay. Let's go back to Panel 1,
3 the first paper by Lafreniere...

4 Firstly, Mr. Martel reminded me that we
5 think that the evidence of this panel can go fairly
6 quickly because there is only going to be three parties
7 who have indicated a desire to cross-examine on this
8 panel. I think you are all aware of the statements of
9 issue from those three parties that have come in.

10 The Board also made a ruling yesterday
11 that parties who are late in submitting their
12 statements of issue are going to have to seek leave of
13 the Board if they want to cross-examine. We are
14 expecting parties to adhere to the time lines we have
15 set.

16 All right. With respect to the first
17 paper by Lafreniere, page 18, the paper indicates that
18 as a result of various types of reserves, moose runs,
19 et cetera, these add significantly to the total wood
20 supply costs. The Board would like to know what these
21 costs are, if that kind of information is available,
22 and from where do they result? Is it a result
23 essentially of the timber taken out of production, is
24 it a result of reserves causing access problems? Why
25 is the term 'significantly' used in that paragraph?

1 Also page 18, the Crown timber charges
2 for roundwood are indicated to be a problem. We would
3 like to know whether or not they are increasing over
4 the past few years or were they always too high? Why
5 essentially is the statement made that the charges are
6 causing a problem with respect to roundwood?

7 With respect to the Macdonald paper, page
8 33, there is a comparison on page 33 with the three
9 jurisdictions, Ontario, Quebec and Alabama. The Board
10 would like to know how Ontario compares with the other
11 two provinces in which Abitibi operates; namely,
12 Ontario and Manitoba?

13 Dealing with the figures for Alabama, or
14 the comparison given between Ontario and Alabama, we
15 are aware that the labour and transportation costs are
16 lower, but we would like an explanation as to why the
17 cost of wood furnish is so much lower in Alabama than
18 Ontario and Quebec? What are the factors involved that
19 significantly lower the costs for wood furnish in
20 Alabama? And we would like to know specifically if the
21 reason for the higher costs in the opinion of the
22 company are because of the way timber production is
23 managed in Ontario? Is it a result of timber
24 management?

25 Because, as we understand it, there are

1 not the equivalent of Crown lands in Alabama and the
2 government agencies down there are not managing timber
3 production in the same manner as they would be in
4 Ontario.

5 We would also like to know who pays for
6 the cost of various timber management activities such
7 as regeneration, maintenance in Alabama? We know what
8 happens in Ontario, but we would like to know if other
9 jurisdictions also subsidize some of these timber
10 management activities in terms of returning monies to
11 industry which may or may not carry out the activities.

12 Page 35, there is an indication and a
13 listing of some of the new legislation. Where does the
14 author get his facts for the liberalization of the
15 Workers Compensation legislation in particular? He
16 refers to the new Occupational Health and Safety Act
17 enacted over the last four years.

18 To our knowledge, there has not been an
19 enactment of that Act over the last four years, and
20 presently it's the bill before the Ontario House in
21 second reading. Is that what he's referring to, or is
22 he referring to something else?

23 We have some other questions with respect
24 to the poplar issue. On page 41, Mr. Macdonald
25 indicates that he doesn't see a future for poplar, the

1 use of poplar in newsprint. We would like to know how
2 that evidence accords with the evidence we have heard,
3 for instance, in Panel 5 from we believe Mr. Duncanson
4 who seemed to indicate that there was increased use of
5 poplar in terms of the industry, and we are aware from
6 the evidence that there is a lot of poplar out there,
7 and the problems used to be that industry couldn't use
8 it but they have now changed their equipment around, et
9 cetera, so they can use some of this. Can they use it
10 in terms of newsprint or is the increased use in terms
11 of other types of production?

12 Going on to the Boswell paper, he again
13 indicates that there is some uncertainties as to
14 whether or not you can use poplar for the production of
15 specialty papers. Again, this doesn't appear to accord
16 with what the Board heard earlier about the increased
17 use of poplar. So we would like an indication at least
18 from the Industry perspective as to how they actually
19 see the use of poplar either increasing, staying the
20 same, or decreasing in the future.

21 There is an indication in the Boswell
22 paper that E.B. Eddy has fully trained fire crews. We
23 assume from what we read that that was company staff
24 trained in fire suppressing, I believe it's page 30.
25 We would like to know if it's a common practice for

1 companies, for the Industry to have their own fire
2 crews and, if so, how do these interface with the
3 Ministry's fire suppression activities in terms of
4 being regulated?

5 Page 30 indicates in the form of a graph
6 that reforestation, which was at the beginning of the
7 decade carried on by the Ministry, near the end of the
8 decade the company is doing it entirely, and they are
9 doing more of it than was done earlier on. We assume
10 that is the result of the FMA program and the middle
11 years show both the company and the Ministry involved
12 in reforestation, and we assume that is the Ministry
13 finishing up with their obligations and then
14 transferring them over to the company under the FMA
15 agreement.

16 We would like to know whether or not the
17 company is having any difficulty in obtaining enough or
18 more trees from the Ministry and Ministry nurseries
19 and, in particular, we would like to know whether the
20 company is spending more money on reforestation than it
21 is receiving in terms of compensation from the Ministry
22 for reforestation?

23 Those are the questions that the Board
24 has with respect to the three papers. We did not find
25 any problem, per se, with any of the statements of

1 issue that were filed by the three parties who will be
2 cross-examining.

3 So unless, Mr. Cosman, there is any
4 further clarification that you need, and unless there
5 is any further questions or issues to raise from any of
6 the parties, we have nothing further to add on the
7 scoping.

8 MR. COSMAN: No, there is nothing
9 further, Mr. Chairman. Thank you.

10 THE CHAIRMAN: Anybody else have anything
11 to say. Mr. Lindgren?

12 MR. LINDGREN: One procedural matter that
13 I think we should deal with now as opposed to the
14 commencement of the Industry case; and, that is, the
15 order of cross-examination.

16 As you know, Mr. Chairman, the order has
17 been parties in support first and then parties in
18 opposition. In particular, we are interested in when
19 and where the proponent, the MNR, fits into that order.

20 Mr. Freidin's statement of issues
21 indicates that he would cross-examine on issues raised
22 by other parties. That suggests to me, sir, that he
23 foresees going last in the order.

24 I would submit that the Ministry is, in
25 effect, a party in support and should probably go first

1 as opposed to last. That is what we have been doing to
2 this point, that is the normal practice, I believe that
3 is what the Board's rule Rule 48 sets out, and I don't
4 think there is a compelling reason to depart from that
5 practice.

6 THE CHAIRMAN: Well, there probably
7 isn't, other than the fact that the Ministry may be
8 opposed to the Industry on certain issues.

9 I think it's fair to say, Mr. Lindgren,
10 the Ministry will probably be in substantial support
11 certainly of its own application; and, secondly, the
12 Industry is in substantial support of the Ministry's
13 application with the exception of specific issues which
14 it may be opposed to.

15 There are some sort of hybrid situations
16 here, it's not just cut and dry, I would suggest, the
17 way it is with some of the other parties. It becomes
18 more difficult as well because it's the Ministry's
19 application, it's the Industry that carries out the
20 activities, and the Industry doesn't necessarily have a
21 whole lot to say about the way they are regulated
22 either.

23 What do you say, Mr. Cosman?

24 MR. COSMAN: I don't think I have
25 anything to add or any submissions to make on this

1 issue, Mr. Chairman.

2 MS. BLASTORAH: Mr. Chairman, I do have
3 something to say in response to that, and
4 notwithstanding the fact that the Ministry may be in
5 accord on some issues with Industry - and that is
6 certainly to be expected in this application - I think
7 you have rightly indicated that it's our application;
8 but certainly this is not our evidence, this is the
9 evidence of Industry and, as you have indicated, we may
10 very well differ on some issues. And some of those
11 issues on which we differ may come out during the
12 cross-examination of other parties, and I would
13 certainly not be surprised to see that happen.

14 I think that our position has always been
15 that we should go last, the Ministry should go last
16 because they are the ones that are going to have to
17 deal with the consequences of any order that comes out
18 of this environmental assessment and they should have
19 the opportunity to clarify any issues arising during
20 evidence of any party.

21 And I think that that equally applies
22 here. Even though it's the evidence of Industry, there
23 may be issues that come out that you yourself have
24 indicated are directly related to evidence of previous
25 panels, particularly Panel 5, for instance, the example

1 you gave with the evidence with regard to poplar
2 utilization.

3 And I think that in that sense it's not
4 only appropriate but very important for the Ministry to
5 go last in order to clarify those sorts of issues.

6 THE CHAIRMAN: Well, what about the
7 Ministry of the Environment in terms of going last to
8 start off with. I'm not sure you go last, in any
9 event.

10 MS. SEABORN: Well, Mr. Chairman, as I
11 take Ms. Blastorah's comments this evening she is
12 suggesting that really for the remainder of this
13 hearing MNR would be cross-examining last.

14 I don't think I'm prepared this evening
15 to agree with her on that point and give up my client's
16 traditional position in the hearing which has to been
17 to cross-examine last, so I would like to consider it
18 and obtain some instructions, and I ask the Board not
19 to make a decision on this matter this evening.

20 THE CHAIRMAN: I think the Board finds
21 some favour in those submissions.

22 MS. BLASTORAH: Mr. Chairman, I have to
23 agree. I frankly do not have instructions on this, I
24 assume that my instructions will be that we will want
25 to go last, or certainly after the other parties other

1 than MOE. I presently have no reason to believe we
2 would not want to at least consider going after MOE as
3 well, and I think I should seek instructions.

4 However, I would indicate that I expect
5 my instructions to at least be, and my own position as
6 a matter of logic would be, that we should follow at
7 least the other parties other than MOE.

8 MR. LINDGREN: Mr. Chairman, if I can
9 make one brief comment in relation to a comment made by
10 Ms. Blastorah.

11 She indicated that there may be some
12 issues that arise during the cross-examination of other
13 parties that the Ministry should attend to or clean up
14 in some manner. I would point out that the Ministry
15 does have the right to reply in the end.

16 THE CHAIRMAN: The right of reply.

17 MS. BLASTORAH: I agree, Mr. Chairman,
18 and there may be some necessity to call additional
19 evidence. However, to put the Ministry in the position
20 of having to protract this hearing even longer by
21 calling witnesses and additional evidence at the end of
22 the hearing when it may be a simple matter of a few
23 questions under cross-examination that could deal with
24 the issue, I think is not, if nothing else, the
25 administratively appropriate way to go about this.

1 I think that there may be issues that are
2 relatively easily clarified during the
3 cross-examination of the Ministry, and to leave those
4 issues for re-examination, I think, is not a realistic
5 way to go about it.

6 THE CHAIRMAN: Where is the prejudice,
7 Mr. Lindgren, to a client such as the one you
8 represent, since it's not the Ministry's evidence, it
9 is other parties' evidence?

10 MR. LINDGREN: Our concern is more of a
11 general nature, Mr. Chairman. We are concerned that,
12 in effect, if the Ministry goes last then we will see
13 what amounts to be double re-examination.

14 MS. BLASTORAH: Well, Mr. Chairman...

15 THE CHAIRMAN: Well, I don't think the
16 Board would be permitting that in any event.

17 What I am saying is, is the Board
18 obviously is not going to let the Ministry of Natural
19 Resources nor the Ministry of the Environment repeat
20 cross-examination that has been covered by other
21 parties; just as we won't let you repeat
22 cross-examination covered by other parties. I mean
23 that is just a general rule and we can be vigilant on
24 that.

25 But where, except for that concern, is

1 the prejudice to your client?

2 MR. LINDGREN: Well, I can't identify any
3 prejudice in advance. That was our general concern. I
4 just wanted to raise it tonight.

5 THE CHAIRMAN: All right. Well, I think
6 the Board can probably take care of that, but I think
7 we will defer this matter until both you, Ms.
8 Blastorah, and you, Ms. Seaborn, have instructions
9 which way you want to go.

10 MS. BLASTORAH: Mr. Chairman, just one
11 comment in response to Mr. Lindgren's last submission.
12 I would only submit that any issues on which the
13 Ministry differs with the Industry are hardly likely to
14 be picked up on re-examination by the Industry to the
15 effect certainly that the Ministry would want.

16 Thank you.

17 THE CHAIRMAN: Unless you can give us a
18 rather compelling reason, it would be the Board's view
19 that the Ministry of the Environment should likely go
20 last, rather than MNR, because of their position in
21 this hearing.

22 MS. BLASTORAH: Mr. Chairman, as I have
23 indicated, I will have to seek instructions on that and
24 I think it would probably be appropriate to have some
25 discussion with MOE on this.

1 THE CHAIRMAN: All right.

2 MS. BLASTORAH: I was not expecting the
3 issue to arise tonight.

4 THE CHAIRMAN: Okay. But when you are
5 consulting with your clients, bear in mind that between
6 the two ministries we would like to hear some fairly
7 good reasons why the Ministry of the Environment should
8 not go last, if we were to rule in that way.

9 Mr. Cosman?

10 MR. COSMAN: Yes, Mr. Chairman. Just on
11 another matter which will be of interest to all.

12 We have been working on ways to shorten
13 the length of our presentation and Mr. Cassidy will
14 address you specifically on one of the suggestions that
15 we have which will preserve the full right of
16 cross-examination of all parties but will defer it to
17 the specific panels that are going to be dealing with
18 the subject matter of the specific activities that take
19 place in the forest.

20 Just from the point of view of timing,
21 just to give you an indication of what we anticipate,
22 we would anticipate that we would probably be two to
23 three hours in our opening in which we would outline
24 our full case and outline, for your benefit and that of
25 the parties, where we differ from the MNR in order that

1 those issues might be clearly delineated before we lead
2 our evidence.

3 In terms of Panel 1, subject to the
4 discussion that I will have very shortly with my
5 clients with respect to the matters of concern that the
6 Board has raised, we would anticipate that we would be
7 able to complete our evidence with respect to the three
8 witnesses on Panel 1 in approximately one day. So that
9 I think it's quite safe to say, in terms of
10 cross-examination, that with a start date of February
11 5th, by the end of the day on February 6th, my friends
12 should be ready to commence their cross-examination.

13 And it might be helpful for our planning
14 of Panel 2 to know, at least from those parties who are
15 here, in view of the statements of issues that they
16 have filed, how long they might be or anticipate that
17 they would be in their cross-examinations.

18 THE CHAIRMAN: So you are really a day
19 and a half, if you count in the opening?

20 MR. COSMAN: The opening, yes.

21 THE CHAIRMAN: For direct?

22 MR. COSMAN: That is right. It will be a
23 day for the direct, and then a half day for the
24 opening.

25 THE CHAIRMAN: All right. Now, with

1 respect to one other aspect, just -- oh, Mr. Cassidy,
2 do you want to raise that now about Panel 4?

3 MR. CASTRILLI: I'm content to raise it
4 either now or after you finish the comment you were --

5 THE CHAIRMAN: Okay. Let's deal with you
6 now and then we will go on to something else.

7 MR. CASSIDY: Mr. Chairman, some time
8 ago, I think it was December 22nd - as some sort of, as
9 Mr. Cosman's words, a stocking stuffer - we circulated
10 to the parties an outline of our case as we knew it at
11 the time and it remains substantially unchanged,
12 subject to some of my comments tonight.

13 And the purpose of that was at I believe
14 Ms. Seaborn's request. There is a comment in the
15 outline that I want to address tonight and I have extra
16 copies of that. I trust the other parties have theirs;
17 if not, I have extra copies. (handed)

18 THE CHAIRMAN: Is that Exhibit 997?

19 MS. BLASTORAH: 998 I believe, Mr.
20 Chairman.

21 THE CHAIRMAN: That's right. Looks like
22 998, Mr. Cassidy.

23 MR. CASSIDY: I have got no objection to
24 it being marked as that exhibit number, Mr. Chairman.
25 And I can assure you, that is the last exhibit number

1 I'm going to deal with for a while.

2 MR. MARTEL: 998 and 999 is the other
3 one...?

4 MR. CASSIDY: What was that last one?
5 No, no, no.

6 ---EXHIBIT NO. 998: Document entitled: OFIA/OLMA
7 Panels re: outline of evidence for
Industry Panels 1 through 10.

8 MR. CASSIDY: I think I can deal with
9 this rather quickly, if you flip to -- well, first of
10 all, I can give you an overview, if you wish, very
11 briefly.

12 You will see we have contemplated 10
13 panels and you are obviously familiar with Item 1 which
14 we are dealing with tonight, and item 2 has already
15 been served. I might add that the first six panels
16 have already been served, and the remaining panels are
17 in the process of being served over the course of the
18 next two weeks I suspect.

19 And what I would like to address to you
20 about tonight is in fact with respect to our Panel No.
21 4 referred to by title as: Case Study Introduction,
22 Overview. I'm not sure if the Board has had a chance
23 to read this section. Mr. Martel is nodding his head.

24 In essence, what I would like to speak to
25 you about is, it starts with the third paragraph which

1 discusses that the witnesses in this panel intend to
2 provide an overview of the nature of each case study
3 area which forms the subject of this panel and various
4 topics.

5 The concept behind this is to give the
6 Board and the parties an idea of what the rest of -- or
7 major portion of the rest of the OFIA/OLMA evidence is
8 about, which provides case studies which are going to
9 be discussed in each one of the following panels in
10 greater or lesser amounts.

11 The proposal that I have for the Board by
12 way of a mechanism we think might shorten the hearing,
13 is to simply put this evidence in-chief and I suspect
14 - without committing myself definitively - that we
15 could do that in a day to a day and a half or less, and
16 simply give the overview that is contemplated in the
17 third paragraph, and then request that
18 cross-examinations on that material and on the
19 witnesses that are in that panel be deferred to
20 subsequent panels.

21 Because what we then see happening with
22 respect to the subsequent panels: 5, 6, 7 and 8 and
23 possibly 10, will be discussing the parts of that case
24 study or of each one of the case studies that relates
25 to that particular panel. The witnesses who are in the

1 overview panel will be called as subsequent witnesses
2 in one or more of the following panels, in fact one of
3 the witnesses has the task of being on virtually every
4 one of the remaining panels; and, therefore --

5 THE CHAIRMAN: All the witnesses on 4
6 will reappear at some point later on one of the other
7 panels?

8 MR. CASSIDY: Yes. The present witness
9 lineup contemplates that. If there is a change where
10 personnel for unforeseen circumstances have to change
11 in the witness panel that is due, for whatever reason,
12 the Board and Members will be advised, as will the
13 parties.

14 But that is in fact the case, and for
15 that reason we suggest that the cross-examinations
16 could be included in the following panels, since the
17 activities which those witnesses will be talking about
18 will be discussed in more specific detail in the
19 remaining panels.

20 The other proposal we have is that if
21 necessary and upon application by parties to the Board
22 and upon consideration by everyone it is deemed
23 necessary that those original case study introduction
24 overview panel members be recalled, of course, if that
25 were the Board's ruling, then that would be the way to

1 deal with any possible further matters that may arise
2 out of their evidence. So that is our proposal, and we
3 would be asking for your direction in that regard that
4 that happen.

5 I can also indicate I'm advised by Mr.
6 Cosman, who will be dealing with the planning evidence,
7 that there may be an overview of the planning panel
8 which is our tenth and last panel as well. But, again,
9 there will be a full panel of witnesses available for
10 cross-examination on it in Panel 10 as well, so the
11 same direction we will be seeking in that regard.

12 So that's in essence what I was proposing
13 and would ask the Board for that direction.

14 MR. COSMAN: Mr. Chairman, if I may just
15 add to what Mr. Cassidy says as to what he added as to
16 planning.

17 Our thinking is developing, as you might
18 imagine, as the case is being presented and we thought
19 it might be very helpful to the Board not to wait until
20 Panel 10 to have the full benefit of our planning
21 evidence, but basically to have a short overview so
22 that you will have this in mind while you hear the
23 subsequent activity panels.

24 So we were thinking of adding to what was
25 originally contemplated as being a case study overview,

1 a witness or two, basically to give an introduction to
2 the case on behalf Industry.

3 So that, once again, the parties and the
4 Board will have in mind not only the planning scheme
5 that is being proposed by Industry but, as Mr. Cassidy
6 has said, will have in mind the full picture of the
7 evidence which are going to be the subject of specific
8 panels. And I think the advantage of this for my
9 friends on the other side is that they will have the
10 benefit of a full right of cross-examination while
11 having the benefit of having a full understanding of
12 our position before they actually are obliged to
13 cross-examine.

14 So we think that this will help to
15 shorten the hearing because one could spend weeks
16 literally on Panel 4 touching upon the kinds of things
17 that are the subject of the evidence of Panel 4 only to
18 have them again covered in the access, harvesting and
19 the balance of the panels.

20 THE CHAIRMAN: Any parties have any
21 objections to that proposal?

22 MS. SEABORN: No, Mr. Chairman, to the
23 contrary, I have no objection at all. I think it's a
24 very sensible proposal that's being put forward by the
25 Industry.

1 There is one question for Mr. Cosman. I
2 take it, Mr. Cosman, we would still be submitting
3 interrogatories with respect to Panel 4 in the normal
4 course?

5 MR. COSMAN: Yes, Mr. Chairman, because
6 we would answer those to the extent that we could and,
7 once again, that will be the subject of possible
8 evidence by that panel. But, once again, as it has
9 been pointed out, if someone is dissatisfied with an
10 answer to an interrogatory, that person will have the
11 right to cross-examine subsequently.

12 THE CHAIRMAN: Well, you could also
13 indicate in the answer to the interrogatory that that
14 will be dealt with by one of the subsequent panels.

15 MR. COSMAN: Yes. In fact, that is
16 exactly the point.

17 MS. SEABORN: And the second thing, Mr.
18 Cosman, when you have a better idea with respect to the
19 timing of the overview of the planning evidence, I
20 would be interested in knowing where you might intend
21 to call those witnesses, just for my own planning
22 purposes.

23 MR. COSMAN: Our contemplation of that is
24 that we would, at the same time that Panel 4 testifies,
25 just add a witness or two from our final planning panel

1 to, in very brief terms and short time, provide that
2 outline.

3 THE CHAIRMAN: So, as we understand it, 1
4 and 2 are going to be heard in Toronto, then we are
5 coming back to Thunder Bay for the next five and back
6 to Toronto for the remaining three; is that correct?
7 Is that still the --

8 MR. CASSIDY: That's correct. That was
9 the terms of your previous order, Mr. Chairman.

10 THE CHAIRMAN: Okay. So that doesn't
11 change at all by what you are proposing today?

12 MR. CASSIDY: No.

13 THE CHAIRMAN: Okay.

14 MR. LINDGREN: I agree with Ms. Seaborn
15 that this does appear to be a sensible approach, Mr.
16 Chairman; however, I have not yet obtained instructions
17 from my client on this matter, I can do so overnight.
18 I would also point out, Mr. Chairman, there are a
19 number of other parties who are not here today to speak
20 to the matter.

21 THE CHAIRMAN: Well, that's...

22 MR. COSMAN: Mr. Chairman, we actually
23 raised this matter earlier just so that the parties and
24 the Board would know. We asked the matter be put over
25 today because obviously we have to plan our evidence

1 and it is clearly in the record, the parties had notice
2 that this was going to be discussed today and we are
3 hoping that -- you know, the idea of deferring
4 everything is a dangerous concept.

5 THE CHAIRMAN: Well, the Board has had
6 some indication previous to walking in here of that
7 proposal. We have discussed it amongst ourselves.
8 Frankly the Board thinks it is a good idea, the Board
9 thinks it would expedite things, and it seems to make a
10 lot of sense, and it will avoid repetition.

11 I think for the Board to indicate that we
12 find anything wrong with it at all, we would have to
13 have some very significant objections by some party.

14 And I think you can take it, Mr. Cosman,
15 that the Board is approving of that arrangement.

16 MR. COSMAN: We will proceed on that
17 basis, Mr. Chairman.

18 MS. BLASTORAH: Mr. Chairman, if I could
19 just make one comment. I was certainly aware of Mr.
20 Cosman's suggestion that Panel 4 be an overview panel
21 and that cross-examination on that evidence be deferred
22 and I had no problem with that.

23 I just mentioned to Mr. Cassidy that I
24 had not heard that it was contemplated that planning
25 evidence would be put in there. At first blush I don't

1 have any problem with that, I simply haven't had time
2 to confirm or obtain instructions.

3 THE CHAIRMAN: Well, as I understand it,
4 the planning evidence is going to come at the end, this
5 is going to be a brief overview of the planning
6 evidence.

7 MS. BLASTORAH: Yes, I appreciate that.
8 And, as I say, at first blush I don't think I have any
9 problems with it, but I simply feel obliged obviously
10 to seek instructions to confirm that.

11 THE CHAIRMAN: Well, once again, unless
12 you can come up with a very good reason of why we
13 shouldn't get an inkling of what the planning evidence
14 is in advance of waiting for Panel 10, I think the
15 Board finds absolutely nothing wrong with that.

16 MS. BLASTORAH: Certainly, Mr. Chairman.
17 I only wanted to indicate I didn't have instructions.

18 THE CHAIRMAN: Okay. Are there any
19 further matters to deal with today?

20 (no response)

21 Okay. Ladies and gentlemen, as most of
22 you are aware - before I get to this - there is one
23 other matter I want to just mention; and, that is, we
24 have received an indication that there is only one
25 party that wants to cross-examine with respect to the

1 clearcut evidence. The statements of issue were
2 supposed to be in today.

3 MR. CASSIDY: Mr. Chairman, I take it you
4 received our statement of issues which I filed with Ms.
5 Devaul at approximately 3:45 p.m.

6 THE CHAIRMAN: Well, I guess we weren't
7 aware of that at 3:45. We knew as of two o'clock.

8 MR. CASSIDY: It was rather interesting,
9 Mr. Chairman. I was walking in and gave her a
10 statement of issues and received a judgment in return.

11 THE CHAIRMAN: Okay. Well, then there is
12 two parties, but it sounds very much like that panel
13 should be able to go relatively quickly.

14 One of the parties, Forests for Tomorrow,
15 who indicated initially that was one area of particular
16 interest has indicated that they are going to deal with
17 that in their own case.

18 Can you give us any indication how long
19 the presentation of direct on the clearcut will take?

20 MS. BLASTORAH: Mr. Chairman, Ms. Murphy
21 is handling that, but my understanding is that it is
22 projected for half a day for the evidence-in-chief.

23 THE CHAIRMAN: Half a day.

24 MR. MARTEL: And the AOCs?

25 MS. BLASTORAH: I believe the AOC

1 information is in addition to that, Mr. Martel. I will
2 have to confirm with Mr. Freidin, but I would think
3 that all told the two together would not be more than a
4 day, if that.

5 THE CHAIRMAN: All right. Well, that
6 looks promising in any event.

7 So with any degree of luck we will
8 starting the Industry's case on February 5th as
9 planned. I think for the parties that are present we
10 might get some indication, if we could, as to how long
11 the parties expect to be with Panel 1 to the extent
12 that they can.

13 Mr. Lindgren?

14 MR. LINDGREN: You are referring to Panel
15 1 of the Industry case?

16 THE CHAIRMAN: Yes.

17 MR. LINDGREN: I will have to contact Ms.
18 Swenarchuk.

19 THE CHAIRMAN: Okay. How about you, Ms.
20 Seaborn?

21 MS. SEABORN: A couple of hours, Mr.
22 Chairman.

23 MS. BLASTORAH: Mr. Chairman, again, this
24 isn't my task, but I would project half a day or less.
25 Again, our statement of issues indicates that we

1 contemplate cross-examination arising out of that by
2 other parties and that will in return be affected by
3 the Board's determination of where we fit in the order
4 of cross-examination, but I would think half a day
5 would cover it.

6 THE CHAIRMAN: So it looks like that
7 should be over in three days based on what you are
8 saying; a day and a half for cross and a day and a half
9 to put in your direct.

10 MR. COSMAN: So I better have my Panel 2
11 on stand-by for the following week then, Mr. Chairman.

12 THE CHAIRMAN: It would probably be a
13 good idea.

14 How long are we going to be tomorrow in
15 terms of the cross-examination on 17?

16 MR. CASSIDY: Half an hour.

17 THE CHAIRMAN: You are going to be half
18 an hour.

19 MR. CASSIDY: For me.

20 THE CHAIRMAN: Mr. Lindgren?

21 MR. LINDGREN: I think it is safe to say
22 I will take up most of the day, if not all of it.

23 THE CHAIRMAN: Most of the day. So it is
24 worthwhile starting at 8:00.

25 MR. LINDGREN: I think so, Mr. Chairman.

1 THE CHAIRMAN: Okay. We expect to rise
2 at 3:00, no later than 3:00 tomorrow.

3 MS. SEABORN: Mr. Chairman, has there
4 been an indication from the Federation or other parties
5 how long they expect to be on Panel 17, I am thinking
6 in terms of my own timing?

7 THE CHAIRMAN: We are not sure how long
8 the Federation intends to be, quite frankly. We will
9 have to check with Ms. Devaul. I think she had some
10 conversations yesterday or today with them.

11 MS. SEABORN: Perhaps I will just speak
12 with Ms. Devaul directly tomorrow then.

13 THE CHAIRMAN: Okay.

14 MS. SEABORN: Thank you.

15 THE CHAIRMAN: All right. Ladies and
16 gentlemen, I don't know if everyone got a copy of the
17 Board's ruling today. If they did fine; if not, we
18 have some additional copies here that I guess I will
19 leave on the court reporters' table in case anyone
20 wants one.

21

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EA 87-02

ENVIRONMENTAL ASSESSMENT BOARD

Proposed Class Environmental Assessment by the
Ministry of Natural Resources for Timber Management
on Crown Lands in Ontario

IN THE MATTER OF Section 12(2) of the Environmental
Assessment Act (R.S.O. 1980, c. 140), as amended

-and-

IN THE MATTER OF a Notice by the Honourable Jim
Bradley, Minister of the Environment, requiring the
Environmental Assessment Board to hold a hearing with
respect to a Class Environmental Assessment (No.
NR-AA-03) of an undertaking by the Ministry of Natural
Resources for the activity of timber management on
Crown lands in Ontario.

RULING AND REASONS FOR RULING
(Licensing Matters and the Definition of the
Proponent's Undertaking)

The issue before the Board for determination arose as a
result of counsel for the proponent MNR requesting
clarification of certain statements contained in the
Statements of Issues filed by both Treaty No. 3 and the
Nishnawbe-Aski Nation with respect to the evidence to
be led by MNR in Panel 17.

Counsel for both native groups indicated that it was
their intention both to cross-examine Panel 17
witnesses and to adduce their own evidence with respect
to the allocation of resources which in the context of
timber management equates to raising questions
concerning the impacts or effects of licensing employed
in part as a means of regulating certain activities
comprising part of the proponent's undertaking.
Counsel for MNR made preliminary submissions on
November 28th, 1989 to the effect that all issues
concerning the allocation of resources including the
granting of licences were beyond the jurisdiction of

granting of licences were beyond the jurisdiction of the Board in this hearing and that any cross-examinations of Panel 17 witnesses relating to these issues should not be permitted.

Given the importance of licensing in the overall context of this hearing the Board decided to hear submissions from all other interested parties and directed that Counsel for Treaty No. 3 file a Notice of Motion returnable January 9th, 1990. Mr. Colborne advised the Board that since MNR had raised the objection to his proposed cross-examination on matters relating to the allocation of resources, MNR should be the party requesting the appropriate ruling from the Board and accordingly the Board redirected Counsel for MNR to serve and file a Notice of Motion forthwith. The text of the Notice of Motion filed by MNR is set out as follows:

"The motion is for:

An order that the Environmental Assessment Board does not have the jurisdiction to make any orders respecting loans, grants or guarantees of debts, or the issuance or granting of a licence, permit, approval, permission or consent related to the undertaking of timber management; to make orders respecting the administration or structure of the current licensing schemes for the undertaking of timber management; or to deal with issues concerning entitlement to or allocation of the benefits of the timber resource.

Without limiting the generality of the foregoing, it is submitted that the following issues fall within the category of matters not within the jurisdiction of the Board:

- 1) whether "privately owned forests" constitute an alternative to the undertaking,
- 2) whether there should be smaller or larger sized, and/or shorter or longer term Forest Management Agreements,
- 3) whether there should be more or fewer, or larger or smaller Order in Council licences

or District Cutting Licences,

4) whether certain individuals or groups should or should not be provided with licences, permits, approvals, permissions or consents to carry out timber management activities,

5) whether certain individuals or groups should or should not be provided with more or less in the way of loans, grants or guarantees of debts in relation to the undertaking of timber management.

AND TAKE NOTICE that in support of this application, the applicant will rely on the Environmental Assessment Act, R.S.O. 1980, c. 140, Ontario Regulation 205/87 s. 9, the EA Update, Ontario Ministry of the Environment, October 1976, and on the Crown Timber Act, and on such further and other matters as counsel may advise, and this Board permit."

In support of its motion MNR relied primarily upon s. 9 of Ontario Regulation 205/87 enacted under the Environmental Assessment Act and Volume I, Number 1 of the EA Update (Appendix I) published by the Environmental Approvals Branch of the Ministry of the Environment.

S. 9 of Regulation 205/87 states:

"The undertaking of making a loan, giving a grant, giving a guarantee of debts or issuing or granting a licence, permit, approval, permission or consent is exempt from the provisions of subsection 5(1) of the Act."

Counsel for MNR submitted that this provision provides the basis for exempting all of the matters referred to therein from the provisions of the EA Act and places them therefore beyond the jurisdiction of the Board. Counsel for MNR found further support for their proposition in the background notes relating specifically to s. 9 of Regulation 205/87 found in the EA Update referenced above which states:

"Section 9 provides that loans, grants, permits or approval are not in themselves,

undertakings which require environmental assessment. The general intention is not to regulate these activities, but rather to apply the Act to the undertakings which they facilitate if such undertakings are environmentally significant. Exception to this general policy will be dealt with, as they arise, by means of further Regulations."

Thus in Mr. Freidin's view:

"The purpose of the Act is to examine activities and by that, in terms of this case, that means the activities which occur in the forest; the activities which it refers to are the activities of timber management, the activities of access, harvest, renewal and maintenance. The Act does not deal with the issue of licensing which might facilitate the implementation of those activities in the forest." (transcript volume 170, page 30081).

Before commenting on the position taken by MNR reference should also be made to s. 10 of Regulation 205/87 which provides that:

"Notwithstanding any provisions of this Regulation exempting any undertaking from the provisions of the Act, where an environmental assessment of an undertaking is submitted all provisions of the Act apply in respect of that undertaking."

It should be further noted that although Regulation 205 contains a definition section, it does not define the term "undertaking" which is specifically defined under s. 1(o) of the Act, and therefore under the normal rules of statutory interpretation, the term "undertaking" as it is used in ss. 9 and 10 of Regulation 205 must be accorded the meaning attributed to it in s. 1(o) of the EA Act.

S. 1(o)(i) of the EA Act defines the term "undertaking" as:

"An enterprise or activity or a proposal, plan or program in respect of an enterprise or activity by or on behalf of Her Majesty in right of Ontario by a public body or public bodies or by a municipality or

municipalities, or..."

The necessity of interpreting the effect of the apparent exemptions set out in s. 9 of the Regulation in the context of the undertaking before the Board for approval will become clear later in the course of the Board's reasons for decision on this motion, for in the Board's view any comfort that MNR may derive from s. 9 is negated to a large extent by s. 10 of the same Regulation.

Counsel for MNR maintained throughout the course of his submissions on January 9th that the undertaking before the Board for approval consisted of the activities of access, harvest, renewal and maintenance and did not include a "programme, proposal or plan" for timber management in respect of the four named activities. He stated categorically:

"We are not in a legal sense here asking for approval of the planning process, we are not here asking for the approval of that plan, if you want to call it that, we are here asking for approval of an undertaking which, according to this definition, are the activities.

And we realize that we must, in fact, put forward in order to get approval for those activities, a reasonable planning process, and that is why we are talking about planning processes because we know that there must be a reasonable planning process in order to get approval to carry out those activities."
(transcript Volume 171, p. 30276)

It was and continues to be the Board's view that the undertaking before the Board comprising the subject Class EA should properly be described in terms of a proposal, plan or program (i.e. a timber management planning process) in respect of the activities of harvest, access, renewal and maintenance. Furthermore, the Board advised counsel for the proponent that in its view, the description or definition of the undertaking as a timber management planning process in respect of the four named activities was the only one which could support the concept of a class environmental assessment.

Much of the evidence led by MNR over the past 20 months relates to its proposed timber management planning process which has been characterized as the framework under which the activities of harvest, access, renewal and maintenance will be carried out, and it defies logic in the context of this application for the proponent to describe its undertaking otherwise.

As pointed out by counsel for the Ministry of the Environment, MNR stated in its Class Environmental Assessment at page 14 (filed as Exhibit 4):

"Interpretations of the Environmental Assessment Act have provided for the use of a class environmental assessment for common sets of activities. This approach is predicated on the basis that an acceptable planning process is developed in the class environmental assessment for application whenever and wherever the undertaking is carried out."

Ms. Seaborn on behalf of the Ministry of the Environment went on to state:

"In our view, the approval that is contemplated by MNR itself includes both the four activities and the planning process. Now, whether or not the definition of undertaking under section 1(o) of the Act is limited to the four activities or includes the four activities and the planning process; in our submission, that doesn't change the fact that whatever approval comes out of this approval is going to relate to both the activities and the planning process" (transcript Volume 171, p. 30395).

The Ministry of the Environment stated on p. 16 of the Government Review (filed as Exhibit 5):

"The use of Class EAs has developed over the years according to the needs of proponents. The EA Branch has developed an approach to the review and approval of Class EAs based on the requirements of s. 5(3) of the EA Act. The EA itself is subject to the formal review and approval process under the Act and normally defines an environmentally based planning procedure for the future planning

and approval of individual projects."

At p. 18 of the Government Review the Ministry of the Environment went on to state:

"The analysis of the Class Environmental Assessment for Timber Management on Crown Lands in Ontario is divided into two components: First, the Class EA Document itself; and, second, the planning process to be utilized for the production of future timber management plans. Both the document and the future planning process must meet the requirements of the EA Act as there are really two levels of planning involved in a Class EA; the present and the future."

In light of the confusion that arose as a result of the proponent's definition of the undertaking to include only the activities of harvest, access, renewal and maintenance, the Board directed MNR and the Ministry of the Environment to reconsider their respective positions on this matter and to advise the Board on Tuesday, January 16th, 1990 of the results of their deliberations. The Board also granted other interested parties the right to make submissions on this issue as well.

The issue as to what is before the Board for approval in terms of the "undertaking" in the light of the definition of that term in the EA Act in s. 1(o) and again referred to in similar terms in s. 3(a) was the subject of protracted discussion by several of the parties throughout the entire day of January 16th. In addition, both Counsel for the Northern Ontario Tourist Outfitters Association and Counsel for the Nishnawbe-Aski Nation who were unable to attend the hearing on January the 16th put forward further submissions by way of letters dated January 12th and January 15th respectively.

Suffice it to say that there was by no means unanimity of view among counsel for the various parties as to what properly constitutes an undertaking involving the concept of a class environmental assessment. It is an issue which deeply concerns the Board for neither a class environmental assessment nor the Class EA approach is specifically defined anywhere in the Act beyond a vague reference in the term "class of undertakings" in s. 41 and the equally vague meaning

which may be attributed to the words "proposal, plan or program in respect of an enterprise or activity..." contained in s. 1(o) and referred to again in s. 3.

To ascertain what properly constitutes a Class EA one is obliged to go beyond the provisions of the Act and counsel referred the Board to numerous statements contained, inter alia, in a January 1977 and October 1976 volume of the EA Update (filed as Exhibits 995 and 996 respectively), the General Guidelines for the Preparation of Environmental Assessment dated January 1981 (filed as Exhibit 994), and the Class EA Document (filed as Exhibit 4), all of which purport to discuss in some fashion the concept of a class environmental assessment.

What is apparent to the Board after carefully reviewing all of the submissions put before it is the indisputable fact that the legislation is sorely deficient in failing to set out clearly or even mention what constitutes a Class EA and in failing to clearly provide direction as to how a proponent should define its undertaking in a manner which is compatible with a class environmental assessment approach.

Instead it is left to the proponent to define its undertaking as it sees fit and it remains for the Board to determine whether or not and in what context the planning process or program which has been put before the Board by MNR in support of the Class EA approach is before the Board, either as the undertaking (or part thereof) or, alternatively, as something that can be only dealt with by the Board in terms of evidence or through imposition of the terms and conditions of approval relating to environmental impacts.

The proponent maintained throughout that it retains the unfettered right to define the undertaking and in the exercise of that right chooses to define it as timber management consisting of sequentially related activities of harvest, access, renewal and maintenance without reference to the planning process (Class EA document Exhibit 4, p. 9).

Counsel in support of MNR's position as to its sole right to define undertaking, included counsel for the Ministry of the Environment, OFIA/OLMA, and the Nishnawbe-Aski Nation. All relied in part upon the decision of the Court of Appeal which affirmed the

decision of the Divisional Court in the Eastern Ontario Hydro stated case (which decision was reproduced by Mr. Colborne in his book of authorities commencing at p. 5).

The statement by the Court of Appeal was clear:

"Only the proponent describes the undertaking proposed ."

And the Board does not take issue with the court's interpretation of the legislation on the facts of the specific case before it. It must be noted, however, that the facts of the case which gave rise to the courts decision was not a class environmental assessment and can, in the respectful view of this Board, be distinguished in the context of the present application. The proponent, the Ministry of the Environment, and indeed all of the parties who addressed this issue agree that realistically the four named activities could not be approved by the Board in the absence of a planning process sanctioned by the Board and in fact a planning process has been put forward by MNR in its EA document and through its witnesses over the course of the presentation of evidence by 17 witness panels. Not only has the proponent led evidence outlining in considerable detail its planning process, but MNR has already led evidence outlining what might be construed to be alternative planning approaches.

Since the class environmental assessment approach assumes the existence of future unknowns it must be based upon a decision-making or planning process which will allow for the appropriate consideration of future unknowns at the time certain activities are to be carried out (General Guidelines for the Preparation of Environmental Assessments - Exhibit 994, p. 5).

As MNR states on p. 16 of its Class EA document (Exhibit 4):

"MNR takes the position that the planning process outlined in this class environmental assessment ensures that adequate protection of the environment is achieved."

And further states on the same page:

"MNR has submitted a class environmental assessment because it is the most appropriate vehicle for defining a common and consistent planning process, and for ensuring that the purpose of the Environmental Assessment Act is attained ."

To suggest that the Board does not have the jurisdiction to consider all relevant aspects of the planning process under which the named activities will be carried out flies in the face of any rationale which has been put forward over the years to justify the use of a Class EA approach, and the proponent has voluntarily adduced literally reams of evidence on Timber Management planning matters in the course of presenting its case to the Board for approval for its application.

Section 1(o)(i) of the EA Act set out above contains wording in the latter part of the statutory definition of the term "undertaking" which, in the Board's view, supports the concept of a class environmental assessment. Under intensive questioning by the Board, counsel for MNR conceded that MNR could have defined the undertaking as a proposal or program of timber management (which includes the planning process) in respect of the activities of access, harvest, renewal and maintenance, however, it chose not to do so. MNR acknowledged that planning is an integral part of the proponent's case and the Board could deal with matters relating to the planning process through the exercise of its own powers to impose terms and conditions under s. 12(2)(e) of the EA Act.

By insisting that its undertaking relates only to the four activities of access, harvest, renewal and maintenance and does not include the timber management planning process, notwithstanding 20 months of evidence to the contrary, MNR has, in the Board's view, not only distorted the de facto situation, but has inadvertently or otherwise obfuscated what is already an area of confusing statutory interpretation.

The Board, after carefully considering the submissions made by all of the parties on this issue has concluded that, on the basis of the specific facts outlined in both the documentary and oral evidence presented in the hearing to date, the "undertaking" before this Board should properly be defined or characterized as a Timber

Management proposal, plan or program in respect of the activities of access, harvest, renewal and maintenance and hereby makes a finding to that effect. In the Board's view this finding does not in fact alter anything that has taken place at this hearing and does not prejudice the proponent nor any of the other parties.

Returning now to the question of whether or not s. 9 of Regulation 205/87 exempts licensing matters from consideration under the EA Act and by extension from consideration at this hearing, the Board has reached the conclusion that licensing employed by MNR as a component of its Timber Management planning process is part of the undertaking before the Board. To the extent that licensing (particularly with respect to Forest Management Agreements [FMAs]) is a part of the Timber Management planning process, it is both relevant and within the Board's jurisdiction to consider.

In the Board's view the practical effect of s. 9 of Regulation 205/87, which is supported by the commentary on s. 9 in Appendix I of the October 1976 EA Update (Exhibit 996), is to ensure that an environmental assessment is not required each time a licence or permit is issued, which in the context of the Crown Timber Act alone would likely number in the hundreds, if not thousands.

But for the enactment of s. 9 an environmental assessment might well have been necessary each time a licence was required in order to proceed with an undertaking for that is the inevitable conclusion that results from a reading of s. 6(i) of the EA Act.

In the vast majority of cases, the routine issuance of licences would not relate to undertakings comprised of activities which are "environmentally significant" and hence the exemption in s. 9 attempts to address in a more rationale fashion what might otherwise become an administrative nightmare.

S. 10 of Regulation 205/87 set out above, however, in the context of MNR's class environmental assessment, in the Board's view, removes the exemption provided in s. 9 and subjects licensing employed by MNR as part of its Timber Management planning process to the provisions of the EA Act. Although the Board may consider the environmental impacts which may arise from the manner

by which MNR employs licensing as a method of regulating the activities which form part of the undertaking, this does not confer jurisdiction upon the Board to interfere with existing licensing arrangements, contracts, or other legal obligations within the discretion of the Crown.

In the result MNR's motion for the order requested is hereby denied. MNR's further motion for particulars also dated December 18th, 1989 was withdrawn.

The Board wishes to thank all Counsel for their submissions and assistance to the Board in what has been a very lengthy yet necessary discussion of extremely complex issues.

Dated at Thunder Bay this 17th day of January, 1990.

Michael I Jeffery, Q.C.,
Chairman.

1 THE CHAIRMAN: I guess we can then
2 adjourn until 8:00 a.m. tomorrow.

3 Thank you.

4 ---Whereupon the hearing adjourned at 6:00 p.m., to be
5 reconvened on Thursday, January 18th, 1990,
6 commencing at 8:00 a.m.

7 [copyright, 1985]
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